APPENDIX A

OPINIONS BELOW

Commonwealth v. *King*, No. 80-CR-412 (Fayette Cir. Ct. Nov. 18, 1980) 1a-4a

King v. *Commonwealth*, No. 81-CA-742-MR (Ky. Ct. App. Dec. 23, 1981) 5a-12a

King v. *Commonwealth*, No. 81-CA-742-MR (Ky. Ct. App. Feb. 26, 1982) (Order Denying Petition For Rehearing) 13a

King v. *Commonwealth*, No. 82-SC-215-D (Ky. May 18, 1982) (Order Denying Discretionary Review) 14a

King v. *Commonwealth*, No. 81-CA-742-MR (Ky. Ct. App. May 21, 1982) (Order Granting Ninety Day Stay Of Execution) ... 15a

NOV 18 1980

FAYETTE CIRCUIT COURT
CRIMINAL BRANCH
SECOND DIVISION

COMMONWEALTH OF KENTUCKY, PLAINTIFF

CHARLIE KING DEFENDANT

FINAL JUDGMENT

SENTENCE OF IMPRISONMENT

INDICTMENT NO. 80CR-412-2

CHARGE: Ct.2: Rape 1st Degree
Ct.3: Promoting Prostitution 2nd Degree

* *

The defendant having entered a plea of not guilty, and on the 1st day of October, 1980, a jury having returned a verdict that the defendant was guilty of the crime of Ct.2 - Rape 1st Degree, Ct.3 - Promoting Prostitution 2nd Degree and fixed his punishment at fourteen (14) years under Ct.2 and one (1) year under Ct.3,

On this 14th day of November, 1980, the defendant, Charlie King, appeared in open Court with his attorney, Hon. Leslie Rosenbaum, and the Court inquired of the defendant and his counsel whether they had any legal cause to show why judgment should not be pronounced, and afforded the defendant and his counsel and opportunity to make statements in the defendant's behalf and to present any information in

mitigation of punishment, and the Court informed the defendant and his counsel of the factual contents and conclusions contained in the written report of the presentence investigation prepared by the Division of Probation and Parole, and the defendant having failed to request time within which to controvert the factual contents contained in said report, and the Court having given due consideration to the report prepared by the Division of Probation and Parole, and the defendant having been given time within which to controvert the factual contents contained in said report, and the Court having given due consideration to the nature and circumstances of the crime, and to the history, character and condition of the defendant, the Court is of the opinion that imprisonment is necessary for the protection of the public because there is a substantial risk that the defendant will commit another crime during any period of probation or conditional discharge; the defendant is in need of correctional treatment that can be provided most effectively by the defendant's commitment to a correctional institution; probation or conditional discharge would unduly depreciate the seriousness of the defendant's crime; due to the defendant's prior criminal record; due to the violent nature of the defendant's crime and due to the deliberate nature of the defendant's crime.

No sufficient cause having been shown why judgment should not be pronounced, sentence was imposed by the Court upon the defendant, and it is therefore ORDERED AND ADJUDGED BY THE

COURT that the defendant is guilty of the crime of Ct.2 - Rape 1st Degree, Ct.3 - Promoting Prostitution 2nd Degree and his sentence is hereby fixed at a maximum term of fourteen (14) years under Ct.2 and one (1) year under Ct.3 in the State Penitentiary at hard labor; and

IT IS FURTHER ORDERED that the Sheriff of Fayette County shall deliver the defendant to the custody of the Department of Corrections hereunder at such location within this state as the Department shall designate.

IT IS FURTHER ORDERED that the defendant is hereby credited with time spent in custody prior to the commencement of sentence, namely, 12 days, towards service of the maximum term of imprisonment.

After imposing sentence, the Court informed the defendant that he has a right to appeal to the Court of Appeals of Kentucky with the assistance of counsel, that if he were financially unable to afford an appeal, a record would be prepared for him at public expense and counsel would be appointed to represent him, that an appeal must be taken within ten days of the date of this judgment and that the Clerk of the Court would prepare and file a notice of appeal on his behalf within that time if he so requests. Pending appeal the defendant is remanded to custody.

It is further ORDERED BY THE COURT that the defendant's appeal bond is set at $15,000.00 full cash or may be allowed to post a property bond.

It is further ORDERED that the sentence of fourteen (14) years under Ct.2 shall run consecutively with the sentence of one (1) year under Ct.3 and that the total sentence shall run consecutively with any other previous sentence the defendant has received.

/s/ N. Mitchell Meade
JUDGE, FAYETTE CIRCUIT COURT

NOTICE

The foregoing Judgment was entered on the 18 day of October, 1980.

Robert M. True, C.F.C.C.
BY: /s/ E. Armstrong D.C.

The foregoing Judgment and notice of entry was served upon the defendant by mailing a true copy to the Hon. Leslie Rosenbaum, attorney of record, postage pre-paid, this 18 day of October, 1980.

BY: /s/ E. Armstrong D.C.

* * * * * * *

OPINION RENDERED: December 23, 1981; 2:00 p.m.
NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 81-CA-742-MR

CHARLES KING APPELLANT

v.

APPEAL FROM
FAYETTE CIRCUIT COURT
HONORABLE N. MITCHELL MEADE, JUDGE
ACTION NO. 80-CR-412

COMMONWEALTH OF KENTUCKY APPELLEE

AFFIRMING

* * * * * * * * * * * *

BEFORE: GUDGEL, HOGGE and LESTER, Judges.

HOGGE, JUDGE. Charles King appeals from a judgment of the Fayette Circuit Court based on a jury verdict finding King guilty of rape in the first degree and promoting prostitution in the second degree. The prosecuting witness in the case was a 17 year old married woman by the name of Sue Blevins, and the events took place in February, 1980. King, Gary Blevins and Buck Johnson were charged with rape by making Sue Blevins engage in sexual intercourse with Buck Jones [*sic*] by forcible compulsion. King was con-

victed as to this charge. (The jury returned a "not guilty" verdict as to a second count involving compelled sexual intercourse with Anthony Rucker). King was also found guilty of advancing prostitution activity as a result of an incident in which Mrs. Blevins had sexual intercourse with Gene Ross for a cash payment. King contends that numerous errors occurred at the trial, including error involving the instructions and the admission of evidence.

The alleged criminal acts took place at a laundromat building in Lexington. Both Sue Blevins and her husband Gary were employed by King. Gary worked in King's vending machine business and Sue folded laundry in King's laundromat. King, who was forty years of age at the time of trial, was married and had two children. Stevie, age 17 and Cindy, age 16.

The prostitution occurred when Gene Ross came to the laundromat and was approached by a 16 year old girl named Kim Christianson. Kim asked him if he wanted to buy some sex. He inquired as to the price and she said thirty dollars. Ross testified that he laid down three ten-dollar bills and went into the bedroom at her instructions. The lights were off and he had sexual intercourse with a woman who he later discovered was Gary Blevins' wife, Sue.

Kim and Sue testified that Charlie King had asked Kim to act as Sue's pimp. Kim stated that after Gene Ross finished she received $10.00 and Charlie King received $20.00. King denied knowing that any prostitution activity was going on.

Cindy King informed her mother (the appellant's wife) that Sue had gone to bed with Ross for money. Mrs. King was upset and went to the laundromat where she slapped Sue. Sue then told her she had been to bed with the appellant whereupon Mrs. King became angry at her husband.

Later the same day King made a tape recording in which he talked to Sue in an effort to get her to admit on tape that she had lied to Mrs. King. In a second section of the tape, the preliminary part of the alleged rape involving King, Gary Blevins and Buck Johnson, at which appellant's son Stevie was also present, was recorded. The propriety of admitting this tape into evidence is one of the major issues raised in the appellant's brief. We note that there is no indication from the appellant that this tape is not authentic, that it was not accurate, or that there had been any alterations in the tape. It is our opinion that there was sufficient evidence to sustain the rape conviction even in the absence of the tape.

Sue testified that on the evening in question that she was afraid of the defendants, and that specifically, she was afraid of Charlie King. King had hit her hand against the bar and had bruised her thumb, causing it to swell. He had also kicked her. Sue told the investigating officers that Charlie had said she had to be punished for telling his wife on him by going to bed with them, walking around the apartment naked, and cleaning up the apartment and she recalled this in her

testimony. At the time of the incident the men started pushing her and telling her to kiss Johnson "and do all that . . . . go to bed . . . . and I didn't want to do it." Sue was asked whether she had gone to bed with the men because she was afraid of a girl named Kim and her friends, and responded "No, I was afraid of Charlie." She testified that she had had sexual intercourse with Buck Johnson and others that night and that she did not want to do so, but she was scared. There was no chance to escape because "everybody kept coming in every fifteen minutes and I had my clothes off and by the time I put my clothes on and got to the door, they would have probably come in." Leatha Pash talked to King by telephone at 2:30 or 3:00 a.m., and heard Sue scream over the phone. Leatha Pash, and George and Laura Clouse testified that Sue was crying the next morning when they saw her. Her thumb was hurt and in George's words, she was "really tore up" emotionally.

The facts in the preceding paragraph were elicited by counsel apart from the tape introduced into evidence. It is our opinion that the issue as to the admissibility of the tape need not be reached in this opinion, as there was sufficient evidence to sustain the rape conviction even excluding the tape. Even if it could be said that some error occurred in the admission of the tape, any such error would not have been prejudicial since, in view of the quantity of evidence of the appellant's guilt independent of the tape, we can-

not say that upon the whole case there is a substantial possibility that the result would have been any different if the tape had not been introduced. *Niemeyer* v. *Commonwealth*, Ky., 533 S.W.2d 218 (1976).

The next issue raised by the appellant's brief if whether the trial court properly refused to allow the appellant to prove prior sexual conduct of the victim. KRS 510.145 specifically states that "In any prosecution under KRS 510.040 through KRS 510.140, ... reputation evidence, and evidence of specific instances of the complaining witness' prior sexual conduct or habits is not admissible by the defendant." KRS 510.145 is applicable in the case before us. It is our opinion that it does not violate the United States Constitution or the Constitution of Kentucky. *Smith* v. *Commonwealth*, Ky. App., 566 S.W.2d 181 (1978). Even assuming that there was error in excluding the evidence which appellant sought to introduce as to Sue's prior sexual conduct, we are of the opinion that it could not have been prejudicial to the appellant's case, in view of the fact that there was already evidence throughout the record that Sue was engaging in prostitution.

The appellant next contends that the instructions given by the trial court were erroneous. He first asserts that the trial court erred in its instructions four and five in using the appellant's aiding of Gary Blevins in acts of forcible compulsion as part of the basis for a finding of guilt. The appellant contends

that an agreement was reached that the Commonwealth would not rely on Blevins' conduct in proving King's guilt. We find no such agreement in the record. There was simply an agreement that Charles King's accountability would be solely founded on the theory of aiding as defined in KRS 502.020(1)(b). In its "Response to Defendant's Discovery Motion," the Commonwealth said that King was responsible as an aider and abettor to Buck Johnson in the crime of rape, and specifically went on to state that it intended to prove that Gary Blevins threatened the use of force on Sue and had in his possession a nightstick. We find no error.

As to the matter of the indictment, we find that the trial court specifically informed the jury that the indictment had no evidentiary value, and we find no reversible error as to this issue. We further believe that the instructions, taken as a whole, were in substantial compliance with RCr 9.56, and also were proper under the law as to complicity in the crime of rape, and the promotion of prostitution in the second degree. We are of the opinion that no instruction on promoting prostitution in the third degree was required in view of the fact that the only evidence presented was to the effect that King managed the operation or that he was not involved in it at all.

The appellant further contends that the trial court failed to give an instruction requiring corroboration of the testimony of the accomplice, Kim Christianson.

Kim's testimony was corroborated by the testimony of Sue Blevins which, by itself, constituted clear evidence of guilt. It was also corroborated by statements of Gene Ross, which, while they did not directly show involvement by King, tended to connect him with the offense. We find no reversible error in the failure to give a corroboration instruction under the circumstances of this case. *Mishler* v. *Commonwealth*, Ky., 556 S.W.2d 676 (1977).

We have examined other allegations of error raised by the appellant, and we find them to be without merit.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

ATTORNEYS FOR APPELLANT:

C. Randall Raine
Leslie Rosenbaum
Suite 300
The Lexington Building
201 West Short Street
Lexington, Kentucky 40507

ATTORNEYS FOR APPELLEE:

Honorable Steven Beshear
Attorney General
Capitol Building
Frankfort, Kentucky 40601

Virgil Webb
Assistant Attorney General
Capitol Building
Frankfort, Kentucky 40601

* * * * * * *

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 81-CA-742-MR

CHARLES KING **APPELLANT**

v.

COMMONWEALTH OF KENTUCKY **APPELLEE**

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE N. MITCHELL MEADE, JUDGE
CIVIL ACTION NO. 80-CR-412

ORDER DENYING PETITION FOR REHEARING

BEFORE: GUDGEL, HOGGE and LESTER, Judges.

The Court having considered the Petition for Rehearing and being sufficiently advised, it is ORDERED that the same is hereby DENIED.

ENTERED: FEBRUARY 26, 1982

/s/ Charles B. Lester
JUDGE, COURT OF APPEALS

* * * * * * * *

SUPREME COURT OF KENTUCKY
82-SC-215-D
(81-CA-742-MR)

CHARLES KING **MOVANT**

V. **FAYETTE CIRCUIT COURT**
80-CR-412

COMMONWEALTH OF KENTUCKY **RESPONDENT**

ORDER DENYING DISCRETIONARY REVIEW

The motion of Charles King for a review of the decision of the Court of Appeals is denied.

ENTERED May 18, 1982.

/s/ John S. Palmore
Chief Justice

* * * * * * * *

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
81-CA-742-MR

CHARLES KING **APPELLANT/MOVANT**

v.

COMMONWEALTH OF KENTUCKY **APPELLEE/RESPONDENT**

ORDER

* * * * * * * * * * *

Pursuant to CR 76.44, a ninety-day stay of execution of the enforcement of the opinion of the Court herein is hereby granted to the appellant/movant, Charles King, in order that he may seek certiorari to the United States Supreme Court.

This twenty-first day of May, 1982.

/s/ Anthony M. Wilhoit
Anthony M. Wilhoit, Judge
Kentucky Court of Appeals

* * * * * * * *

APPENDIX B

STATUTORY PROVISIONS INVOLVED

U.S. Const. art I, §10, cl. 1 ..... 1b

U.S. Const. amend. VI 1b

U.S. Const. amend. XIV, §1 ..... 1b-2b

Liability for conduct of another—Complicity, Ky. Rev. Stat. Ann. §502.020 (Bobbs-Merrill 1975) 2b

Definitions—Forcible Compulsion, Ky. Rev. Stat. Ann. §510.010(2) (Bobbs-Merrill 1975) 3b

Rape in the first degree, Ky. Rev. Stat. Ann. §510.040 (Bobbs-Merrill 1975) 3b

Inadmissibility of evidence of prior sexual conduct or habits of complaining witness—Exception—Procedure for admission, Ky. Rev. Stat. Ann. §510.145 (Bobbs-Merrill Supp. 1980) (Effective June 19, 1976) 3b-4b

Promoting prostitution in the second degree, Ky. Rev. Stat. Ann. §529.040 (Bobbs-Merrill 1975) 4b-5b

Corroboration, Ky. Rev. Stat. Ann. §529.060 (Bobbs-Merrill 1975) 5b

Testimony of accomplice, Ky. Rev. Stat. Ann. RCr. 9.62 (Bobbs-Merrill 1972) (Abolished effective Sept. 1, 1980) 5b-6b

STATUTORY PROVISIONS INVOLVED

U.S. Const. art. I, §10, cl. 1:

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

U.S. Const. amend. VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. amend. XIV, §1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty,

or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ky. Rev. Stat. §502.020: Liability for conduct of another—Complicity—

(1) A person is guilty of an offense committed by another person when, with the intention of promoting or facilitating the commission of the offense, he:
(a) Solicits, commands, or engages in a conspiracy with such other person to commit the offense; or
(b) Aids, counsels, or attempts to aid such person in planning or committing the offense; or
(c) Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so.
(2) When causing a particular result is an element of an offense, a person who acts with the kind of culpability with respect to the result that is sufficient for the commission of the offense is guilty of that offense when he:
(a) Solicits or engages in a conspiracy with another person to engage in the conduct causing such result; or
(b) Aids, counsels, or attempts to aid another person in planning, or engaging in the conduct causing such result; or
(c) Having a legal duty to prevent the conduct causing the result, fails to make a proper effort to do so.

Ky. Rev. Stat. §510.010(2): Definitions—Forcible Compulsion

"Forcible compulsion" means physical force that overcomes earnest resistance or a threat, express or implied, that overcomes earnest resistance by placing a person in fear of immediate death or physical injury to himself or another person or in fear that he or another person will be immediately kidnapped.

Ky. Rev. Stat. §510.040: Rape in the first degree

(1) A person is guilty of rape in the first degree when:
(a) He engages in sexual intercourse with another person by forcible compulsion; or
(a) He engages in sexual intercourse with another person who is incapable of consent because he:
1. Is physically helpless; or
2. Is less than twelve (12) years old.
(2) Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

Ky. Rev. Stat. §510.145: Inadmissability of evidence of prior sexual conduct or habits of complaining witness—Exception—Procedure for admission—

(1) As used in this section, "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to the provisions of this section.

(2) In any prosecution under KRS 510.040 through 510.140, or for assault with intent to commit, attempt to commit, or conspiracy to commit a crime defined in any of these sections, reputation evidence, and evidence of specific instances of the complaining witness' prior sexual conduct or habits is not admissible by the defendant.

(3) Notwithstanding the prohibition contained in subsection (2) of this section, evidence of the complaining witness' prior sexual conduct or habits with the defendant or evidence directly pertaining to the act on which the prosecution is based, may be admitted at the trial if the relevancy of such evidence is determined in the following manner:

(a) A written motion shall be filed by the defendant with the court no later than two (2) days prior to the day of trial, or at such later time as the court may for good cause permit, stating that the defendant has an offer of relevant evidence of prior sexual conduct or habits of the complaining witness.

(b) A hearing on the motion shall be held in the judge's chambers. If, following the hearing, the court determines that the offered proof is relevant and that it is material to a fact in issue, and that its probative value outweighs its inflammatory or prejudicial nature, the court shall admit the offered proof, in whole or in part, in accordance with the applicable rules of evidence.

Ky. Rev. Stat. §529.040: Promoting prostitution in the second degree—

(1) A person is guilty of promoting prostitution in the second degree when he knowingly:
(a) Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two (2) or more prostitutes; or
(b) Advances or profits from prostitution of a person less than eighteen (18) years old.
(2) Promoting prostitution in the second degree is a Class D felony.

Ky. Rev. Stat. §529.060: Corroboration—

(1) No person shall be convicted of prostitution solely on the uncorroborated testimony of a patron.
(2) No person shall be convicted of promoting prostitution solely on the uncorroborated testimony of a person whose prostitution activity he is alleged to have advanced or from whose prostitution activity he is alleged to have profited.

Ky. Rev. Stat. RCr 9.62: Testimony of accomplice—

A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows that the offense was committed, and the circumstances

thereof. In the absence of corroboration as required by law, the court shall instruct the jury to render a verdict of acquittal.

* * * * * * *

APPENDIX C

MISCELLANEOUS DOCUMENTS

Commonwealth v. *King*, No. 80-CR-412
(Fayette Cir. Ct. Aug. 18, 1980)
(Indictment) 1c-3c

Commonwealth v. *King*, No. 80-CR-412
(Fayette Cir. Ct. Sept. 5, 1980)
Defendant's Motion for Bill of Particulars) . 4c-7c

Commonwealth v. *King*, No. 80-CR-412
(Fayette Cir. Ct. Sept. 15, 1980)
(Response to Defendant's Discovery
Motion) 8c-10c

Commonwealth v. *King*, No. 80-CR-412
(Fayette Cir. Ct. Sept. 8, 1980) (Order) . . . 11c-13c

Commonwealth v. *King*, No. 80-CR-412
(Fayette Cir. Ct. Sept. 30, 1980)
(Instructions to Jury) 14c-21c

FAYETTE CIRCUIT COURT
CRIMINAL BRANCH
2nd DIVISION

THE COMMONWEALTH OF KENTUCKY

VS.

ANTHONY V. RUCKER Cts.1 (First Div.)
CHARLIE KING Cts.1,2,3
GARY BLEVINS Ct.1,2
BUCK JOHNSON Ct.2

DIRECT INDICTMENT NO. 80CR412
AUGUST, 1980

COUNTS 1 & 2: RAPE 1ST DEGREE
KRS 510.040
CLASS B FELONY

COUNT 3: PROMOTING PROSTITUTION
IN THE 2ND DEGREE
KRS 529.040
CLASS D FELONY

THE GRAND JURY CHARGES:
COUNT 1:

On or about the 24th day of February, 1980, in Fayette County, Kentucky, the above named Defendant(s), Anthony V. Rucker, Charlie King, and Gary Blevins committed the offense of Rape in the first degree by making Sue Blevins engage in sexual intercourse with Anthony V. Rucker by forcible compulsion;

COUNT 2:

On or about the 24th day of February, 1980, in Fayette County, Kentucky, the above named Defendants, Buck Johnson, Gary Blevins, and Charlie King committed the offense of Rape in the first degree by making Sue Blevins engage in sexual intercourse with Buck Johnson by forcible compulsion;

COUNT 3:

Sometime during the month of February, 1980, in Fayette County, Kentucky, the above named Defendant, Charlie King and a female juvenile committed the offense of Promoting Prostitution in the second degree by promoting and advancing prostitution by providing a place for prostitution and receiving money for prostitution involving a girl less than eighteen years old;

against the peace and dignity of the Commonwealth of Kentucky.

A TRUE BILL
/s/ C. E. Lindberg
Foreman

GRAND JURY WITNESSES

Det. Hal McKinney
Penny Blevins

A TRUE BILL

Presented by the Foreman of the Grand Jury to the Court, in the presence of the Grand Jury, and received

from the Court by me and filed in open Court this 18th day of August, 1980,

/s/ Robert M. True Clerk
Fayette Circuit Court
BAIL $ No bond til Pre-Trial
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.
ARRAIGNMENT is set for the 22nd day of August, 1980, at 10:00.

Blevins - Rec. on $5,000
Rucker - $5,000.00

* * * * * * * *

SEPT 5 1980

FAYETTE CIRCUIT COURT
CRIMINAL BRANCH
SECOND DIVISION

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS. MOTIONS INDICTMENT NO. 80-CR-412

CHARLIE KING, ET AL. DEFENDANTS

* * * * * * * * * * * *

The Defendant, Charlie King, makes the following motions:

1. He moves the Court to dismiss counts 1 and 2 of the indictment against him inasmuch as he is charged with rape in the first degree, the offense denounced by KRS 510.040. Counts 1 and 2 should be dismissed because those counts admit that Charlie King did not have sexual intercourse with Sue Blevins, and such is required by the appropriate statute.

Alternatively, Charlie King moves the Court for an order requiring the Commonwealth to inform him of the precise manner in which it is alleged by the Commonwealth that he could be criminally responsible for the acts of Anthony V. Rucker and Buck Johnson in having sexual intercourse with the alleged victim, Sue Blevins.

Alternatively and additionally, Charlie, pursuant to RCr 6.22, moves the Court for a bill of particulars stating the exact manner in which the events alleged in Counts 1 and 2 of the indictment occurred.

2. Pursuant to RCr 6.22, Charlie King moves the Court for a bill of particulars stating the date, time and place the events alleged in Count 3 of the indictment occurred and stating further the precise manner in which the events alleged in Count 3 of the indictment occurred.

3. Pursuant to RCr 6.22, Charlie King moves the Court for a bill of particulars stating the names and addresses of each witness present when the events alleged in all counts of the indictment occurred, stating the exact statements made by Charlie King and/or the persons who were present with Charlie King at the time each of the events alleged in all counts of the indictment occurred, and stating the names and addresses of each person known to the Commonwealth to have information relevant to the alleged events in all counts of the indictment.

4. Charlie King moves the Court for an order requiring the Commonwealth to furnish to him all evidence exculpatory as to him.

5. Charlie King moves the Court for an order requiring the Commonwealth to furnish to him all investigative reports, tapes, notes, or memoranda of police officers and of witnesses concerning the events alleged in all counts of the indictment inasmuch as he

would be entitled to this information after those persons testified at the trial, and this requrest is made in order to prevent delay, confusion, and the possibility of a continuance of the trial of this action. *LeGrande* v. *Commonwealth*, Ky., 494 S.W.2d 726 (1973).

6. Charlie King moves the Court for an order prohibiting any of the parties or their witnesses at the trial of this case for making any mention of or alluding to the fact that the alleged victim, Sue Blevins, may have some type of faulty mental processes. In support of this motion, Charlie King states that the indictment in Counts 1 and 2 allege rape by means of forcible compulsion and in that event any evidence relating to the incapacity of the alleged victim, Sue Blevins, to consent by reason of mental defect is a material variance from the indictment and, moreover, would only be used for purposes of unfairly prejudicing the jury against this Defendant.

These motions shall be heard before the Court at its regularly scheduled motion hour on Friday, September 12, 1980, at the hour of 9:30 a.m. or at an earlier date upon the agreement of the parties, in the Fayette County Courthouse, Lexington, Kentucky.

ROSENBAUM & ROSENBAUM

BY: /s/ Leslie Rosenbaum
Suite 300, The Lexington Building
201 West Short Street
Lexington, Kentucky 40507
(606) 259-1321

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motions was on this 4th day of September, 1980, delivered to Honorable Benny Hicks, Attorney for the Commonwealth of Kentucky, 275 West Main Street, Suite 300, Lexington, Kentucky 40507 and upon the Honorable Joe Bouvier, Attorney for Gary Blevins, Honorable Randy Morris, Attorney for Anthony V. Rucker, and Honorable Gene Lewter, Attorney for Buck Johnson, all of 317 West Short Street, Lexington, Kentucky 40507.

/s/ Leslie Rosenbaum
ATTORNEY FOR DEFENDANT

* * * * * * *

SEP 15 1980

FAYETTE CIRCUIT COURT
CRIMINAL BRANCH
SECOND DIVISION

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS. RESPONSE TO NO. 80CR412
DEFENDANT'S DISCOVERY MOTION

CHARLIE KING, ET AL. DEFENDANTS

* * * * * *

Comes now, the Commonwealth, by and through counsel, and responds to the Defendant's various motions as follows:

1. As stated in open court by the Commonwealth, the Defendant, Charlie King, is responsible for the acts of the other individuals in counts 1 and 2 by being an aider and abettor to Buck Johnson and Anthony Rucker in the rape of Sue Blevins. Charlie King is responsible as both a principal and an aider and abettor in count 3 of the indictment.

2. The Commonwealth intends to prove that on the date alleged in the indictment in Counts 1 and 2 that Charlie King along with Gary Blevins and others threatened the use of force upon Sue Blevins unless she engaged in sexual intercourse with various individuals at 1023½ Cramer Avenue. The proof will be that Gary Blevins held in his hand a nightstick or a club resembling a nightstick and struck his palm in an

attempt to threaten Sue Blevins. It will also be alleged that Charlie King encouraged Buck Johnson and others to have sexual intercourse with Sue Blevins.

3. The proof for the Commonwealth regarding count 3 will be that Charlie King provided a room in the apartments that he runs for Gene Ross to engage in sexual intercourse for a fee with Sue Blevins. The Commonwealth will also call a witness by the name of Kim Christianson who will testify that she split the thirty dollars ($30) that Gene Ross paid for having sex with Sue Blevins with Charlie King.

4. The Commonwealth has provided the Defendant and his attorney with copies of the written or recorded statements made by Charlie King. The individuals present during the commission of the offenses listed in counts 1 and 2 of the indictment are as follows: Charlie King, Buck Johnson, Gary Blevins, Sue Blevins, Stevie King, and Anthony Rucker. The addresses for these individuals as known to the Commonwealth at this time is as follows: Rucker, 328½ Owsley Avenue; Sue Blevins, 849 Furlong, Lexington, Kentucky; Stevie King, living with his father; Buck Johnson, Fayette County Detention Center; and Gary Blevins, living with or renting from Charlie King. The Commonwealth does not know the address at this time of Kim Christianson. Mr. Gene Ross supposedly is still working for Sutton Plumbing. The other individuals who have information pertaining to this event are Detective Hal McKinney, Sgt. Andy Carter,

and Detective Gary Powell, all of the Lexington Metro Police Department. Two additional witnesses who have information pertaining to this indictment are Leitha Pash, 3608 Crosby Drive, and Carolyn Flynn, 849 Furlong Drive, Lexington, Kentucky.

5. The Commonwealth does not know of any exculpatory evidence on Charlie King's behalf.

Respectfully submitted,

/s/ Benjamin P. Hicks
BENJAMIN P. HICKS
ASSISTANT COMMONWEALTH'S ATTORNEY

This is to certify that a true copy of the foregoing Response has been served upon the Defendant Charlie King by mailing same to his attorney for record, Hon. Leslie Rosenbaum, Lexington Building, Lexington, Kentucky 40507 on this 12 day of September, 1980. (Hand delivery)

/s/ Benjamin P. Hicks
BENJAMIN P. HICKS

* * * * * * *

SEP 8 1980

FAYETTE CIRCUIT COURT
CRIMINAL BRANCH
SECOND DIVISION

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS. ORDER INDICTMENT NO. 80-CR-412

CHARLIE KING, ET AL. DEFENDANTS

* * * * * * * * * * * *

This case was before the Court on Thursday, September 4, 1980, on various motions filed on behalf of the Defendant, Charlie King. The parties were represented by counsel, and the Defendant, Charlie King, also was present. The Court, being sufficiently advised, ORDERS as follows:

1. The motion of the Defendant, Charlie King, to dismiss Counts 1 and 2 of the indictment against him is overruled.

2. By agreement, Charlie King's motion for an order requiring the Commonwealth to inform him of the precise manner in which it is alleged that he is responsible for the acts of others is sustained, and by agreement of the Commonwealth, it is agreed that Charlie King's accountability, if any, is solely founded on the theory of aiding as defined in KRS 502.020(1)(b).

3. Charlie King's motion for a bill of particulars stating the exact manner in which the events alleged in Count 1 and 2 of the indictment occurred is sustained, and the Commonwealth shall furnish that information on or before September 12, 1980.

4. Charlie King's motion for a bill of particulars stating the date, time and place the events alleged in Count 3 of the indictment occurred and stating further the precise manner in which the events alleged in Count 3 of the indictment occurred is sustained, and the Commonwealth will furnish that information to Charlie King's attorney on or before September 12, 1980.

5. Charlie King's motion for a bill of particulars stating the names and addresses of each witness present when the events alleged in all counts of the indictment occurred, further stating the exact statements made by Charlie King and/or persons who were present with Charlie King at the time each of the events alleged in all counts of the indictment occurred, and further stating the names and addresses of each person known to the Commonwealth to have information relevant to the alleged events and all counts of the indictment is sustained, and this information shall be furnished to Charlie King's attorney on or before September 12, 1980.

6. Charlie King's motion for an order requiring the Commonwealth to furnish to him all evidence exculpatory as to Charlie King is sustained, and this

information shall be furnished on or before September 12, 1980, and the obligation of the Commonwealth to furnish such information shall be continuing.

7. Charlie King's motion for an order requiring the Commonwealth to furnish to him all investigative reports, tapes, notes, or memoranda of police officers and of witnesses concerning the events alleged in all counts of the indictment is overruled.

8. Charlie King's motion for an order prohibiting any of the parties or their witnesses from mentioning at the trial of this case or alluding to some faulty mental process on the part of the alleged victim, Sue Blevins, is taken under advisement.

9. Inasmuch as the Court has granted separate trials for all Defendants charged in the indictment, the trial for the Defendant, Charlie King, heretofore scheduled on September 15, 1980, is continued pending further orders of the Court.

/s/ N. Mitchell Meade
JUDGE, FAYETTE CIRCUIT COURT

TO BE ENTERED.

SERVICE AND NOTICE OF ENTRY WAIVED.

/s/ Benjamin P. Hicks
ATTORNEY FOR COMMONWEALTH

/s/ Leslie Rosenbaum
ATTORNEY FOR CHARLIE KING

* * * * * * *

FAYETTE CIRCUIT COURT
CRIMINAL BRANCH
SECOND DIVISION

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS. INSTRUCTIONS TO THE JURY 80CR412

CHARLIE KING DEFENDANT

* * * * * * * * * * *

1. General Instructions

This court has previously advised you that you were to assume the defendant to be innocent of the charges against him. This assumption places two burdens upon the Commonwealth: first, of producing evidence of the guilt of the accused; and second, of persuading you of his guilt beyond a reasonable doubt. If upon the whole case you have a reasonable doubt as to the defendant's guilt on any count, you shall find him not guilty of the charge.

As to counts 1 and 2, if you find the defendant guilty but have a reasonable doubt as to the degree of the offense of which he is guilty, you shall find him guilty of the lower degree. Instructions 2 and 4 are the higher degrees and Instructions 3 and 5 are the lower degrees for their respective counts.

AUTHORIZED VERDICTS

Counts 1 and 2:
NOT GUILTY or GUILTY:
first degree rape, or criminal facilitation

Count 3:
NOT GUILTY or GUILTY:
second degree promoting prostitution

Instruction No. 2
(Count 1)
First Degree Rape

You will find the defendant guilty under this instruction if you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in this county on or about February 24, 1980, Anthony V. Rucker engaged in sexual intercourse with Sue Blevins without her consent;

(b) That Gary Blevins used forcible compulsion to make Sue Blevins engage in sexual intercourse with Anthony Rucker;

(c) That the defendant aided, counseled or attempted to aid Gary Blevins in making Sue Blevins engage in said sexual intercourse;

AND

(d) That in so aiding, counseling or attempting to aid Gary Blevins (if he did so), the defendant intended to make Sue Blevins engage in sexual intercourse with Anthony Rucker.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 10 years nor more than 20 years, in your discretion.

Instruction No. 3
(Count 1)
Criminal Facilitation

If you do not find the defendant guilty under Instruction 2, you will find him guilty under this instruction if you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in this county on or about February 24, 1980, Anthony V. Rucker engaged in sexual intercourse with Sue Blevins without her consent;

(b) That Gary Blevins used forcible compulsion to make Sue Blevins engage in sexual intercourse with Anthony Rucker;

(c) That the defendant aided, counseled or attempted to aid Gary Blevins in making Sue Blevins engage in said sexual intercourse;

AND

(d) That in so doing, the defendant knew that he was providing Anthony Rucker with the means or opportunity to engage in sexual intercourse with Sue Blevins without her consent.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

Instruction No. 4
(Count 2)
First Degree Rape

You will find the defendant guilty under this instruction if you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in this county on or about February 24, 1980, Buck Johnson engaged in sexual intercourse with Sue Blevins without her consent;

(b) That Gary Blevins used forcible compulsion to make Sue Blevins engage in sexual intercourse with Buck Johnson;

(c) That the defendant aided, counseled or attempted to aid Gary Blevins in making Sue Blevins engage in said sexual intercourse;

AND

(d) That in so aiding, counseling or attempting to aid Gary Blevins (if he did so), the defendant intended to make Sue Blevins engage in sexual intercourse with Buck Johnson.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 10 years nor more than 20 years, in your discretion.

Instruction No. 5
(Count 2)
Criminal Facilitation

If you do not find the defendant guilty under Instruction 4, you will find him guilty under this instruction if you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in this county on or about February 24, 1980, Buck Johnson engaged in sexual intercourse with Sue Blevins without her consent;

(b) That Gary Blevins used forcible compulsion to make Sue Blevins engage in sexual intercourse with Buck Johnson;

(c) That the defendant aided, counseled or attempted to aid Gary Blevins in making Sue Blevins engage in said sexual intercourse;

AND

(d) That in so doing, the defendant knew that he was providing Buck Johnson with the means or opportunity to engage in sexual intercourse with Sue Blevins without her consent.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

Instruction No. 6
(Counts 1 & 2)
Definitions

"SEXUAL INTERCOURSE"—Means sexual intercourse in its ordinary sense but is limited to sexual intercourse between persons not married to each other. Sexual intercourse occurs upon any penetration, however slight.

"FORCIBLE COMPULSION"—Means a threat, express or implied, that overcomes earnest resistance by placing a person in fear of immediate death or physical injury to herself.

"PHYSICAL INJURY"—Means substantial physical pain or any impairment of physical condition.

Instruction No. 7
(Count 3)
Second Degree Promoting Prostitution

You will find the defendant guilty under this instruction if you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in this county on or about February 1980, he knowingly provided a place for Sue Blevins to engage in prostitution, he knowingly received money for Sue Blevins' act of prostitution, or did both of these acts;

AND

(b) That in so doing (if he did so), Sue Blevins was less than 18 years of age.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

Instruction No. 8
(Count 3)
Corroboration

You cannot convict the defendant of promoting prostitution solely on the testimony of Sue Blevins unless it is supported by other evidence tending to connect the defendant with the commission of the offense. Such other evidence is not sufficient for that purpose if it merely shows that such offense was committed by someone and the circumstances under which it was committed.

Instruction No. 9
(All Counts)
Unanimous Verdict

The verdict of the jury as to each count must be unanimous and be signed by one of you as Foreman. You may use the forms provided below in writing your verdict.

AS TO COUNT 1:

(a) We the jury find the defendant NOT GUILTY.

FOREMAN /s/ Joe Warren Jr.

(b) We the jury find the defendant GUILTY under Instruction _____ and fix his punishment at _____.

FOREMAN _____

AS TO COUNT 2:

(a) We the jury find the defendant NOT GUILTY.

FOREMAN _____

(b) We the jury find the defendant GUILTY under Instruction Four and fix his punishment at Fourteen Years.

FOREMAN /s/ Joe Warren Jr.

AS TO COUNT 3:

(a) We the jury find the defendant NOT GUILTY.

FOREMAN _____

(b) We the jury find the defendant GUILTY under Instruction Seven and fix his punishment at One Year.

FOREMAN /s/ Joe Warren Jr.

* * * * * * *